92-1699

Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

JOHN C. JUSTICE and STEVEN T. LYNCH,

Petitioners,

vs.

Lt. JERRY SUITS, JUDSON CHILDS, Assistant Warden of Shawnee Correctional Center, Pfc. D.R. FRIEDMAN, DAVID G. SANDAHL, Warden of Shawnee Correctional Center, GARY RICH, Internal Affairs Officer of Shawnee Correctional Center, MICHAEL P. LANE, Director of the Illinois Department of Corrections, KENNETH L. McGINNIS, Successor to Michael P. Lane as Director of the Illinois Department of Corrections, and UNKNOWN EMPLOYEES OF SHAWNEE CORRECTIONAL CENTER,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

John C. Justice, *in propria persona*
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Cicero, Illinois 60650
708-656-3250

QUESTIONS PRESENTED FOR REVIEW

1. Did the Seventh Circuit err in holding that the staff of a State prison may conduct searches of visitors' vehicles which remain outside the confines of the prison?

2. Did the Seventh Circuit err in holding that deprivation of visitation by the only friend who had visited an inmate routinely over a period of years is not cruel and unusual punishment?

3. Did the Seventh Circuit err in holding that non-incarcerated persons are devoid of any right of visitation with incarcerated friends and relatives?

PARTIES TO THE PROCEEDING

The plaintiffs are John C. Justice, a visitor, and Steven T. Lynch, an inmate in the Illinois prison system.

The defendants official capacities at the time of the incident complained of are: Lt. JERRY SUITS is an officer of Shawnee Correctional Center which is an Illinois prison, JUDSON CHILDS, is Assistant Warden of Shawnee Correctional Center, Pfc. D.R. FRIEDMAN is an Illinois State Police officer, DAVID G. SANDAHL is Warden of Shawnee Correctional Center; GARY RICH is Internal Affairs Officer of Shawnee Correctional Center; MICHAEL P. LANE was Director of the Illinois Department of Corrections; KENNETH L. McGINNIS is successor to Michael P. Lane as Director of the Illinois Department of Corrections, and UNKNOWN EMPLOYEES OF SHAWNEE CORRECTIONAL CENTER who may have been responsible for the policies complained of.

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OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE BY OTHER COURTS OR ADMINISTRATIVE AGENCIES.

The opinion of the United States District Court for the Southern District of Illinois was rendered by the Honorable William L. Beatty, who ruled on the Plaintiffs' Objections to the Report and Recommendations of Magistrate Cohn, dismissing all Defendants. The Judgment was entered in this action on July 19, 1991, in an unpublished opinion.

The opinion of the Seventh Circuit Court of Appeals was given on November 20, 1992 by the Honorable William J. Bauer, Chief Judge, the Honorable Walter J. Cummings, and the Honorable Thomas E. Fairchild as an unpublished order.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) The United States Court of Appeals for the Seventh Circuit issued its opinion in Docket # 91-3013 on November 20, 1992.

(ii) No Petition for Rehearing was filed with the Seventh Circuit.

(iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari is 28 U.S.C. 1254(1). 28 U.S.C. 2201 also applies, in as much as your petitioners seek declaratory judgment as to their rights.

CONSTITUTIONAL PROVISIONS & STATUTES

Fourth Amendment to the Constitution for the United States

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I Section 6 of the Constitution of the State of Illinois

> Searches, Seizures, Privacy and Interceptions
>
> The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping

devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. (Emphasis added.)

Eighth Amendment to the Constitution for the United States

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth Amendment to the Constitution for the United States

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article I, Section 24, of the Constitution of the State of Illinois

Rights Retained The enumeration in this Constitution of certain rights

shall not be construed to deny or disparage others retained by the individual citizens of the State.

Fourteenth Amendment to the Constitution (in pertinent part)

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Revised Statutes, Chapter 1, Paragraph 801,

801. Rule of decision

§ 1. The common law of England,

so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First, excepting the second section of the sixth chapter of 43d Elizabeth, the eighth chapter of 13th Elizabeth, and ninth chapter of 37th Henry Eighth, and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

Illinois Revised Statutes, Chapter 38, Paragraph 1003-7-2(f)

All of the institutions and facilities of the Department shall permit every committed person to receive visitors.

REGULATIONS

20 Ill. Adm. 525.60(f)(3)

(f) Any of the following actions on the part of a visitor may result in a temporary restriction of up to six months:

1) Disruptive conduct of a minor nature.

2) Disobeying an order or posted rule.

3) Refusal to submit to a search.

4) Possession of drugs when the visitor has demonstrated there was no intent to conceal and/or introduce drugs into the facility.

5) Possession of alcohol when the visitor has demonstrated there was no intent to conceal and/or introduce alcohol into the facility.

6) Being under the influence of alcohol or drugs.

7) Possession of other contraband as defined under State, federal or local laws or other Departmental rules not specifically outlined in this Subpart.

RULES

Rules are printed in the Appendix, which is separately bound, at pages 1, 164, and 167

STATEMENT OF THE CASE

The facts alleged in this section were alleged in substance in the Amended Complaint, which is included in the Appendix, at page 30. The alleged facts were uncontroverted.

1. Plaintiffs Lynch and Justice have known each other since before Lynch was arrested and incarcerated in 1979. Justice asked Lynch to be placed on his Visitors List while Lynch was at Menard Penitentiary and has visited Lynch numerous times, alone and with others, since 1985 or thereabouts.

2. During all those years of visiting, while Lynch was at Menard and then at Shawnee Correctional Center (hereafter "Shawnee"), Justice accepted with understanding the necessity of undergoing searches of his person within the confines of the prison prior to visits. His vehicle was parked outside the confines of the prison, not subject

to unsupervised access by inmates. On no occasion was his vehicle subjected to search until his visit for a family picnic on or about June, 1989.

3. The privilege of visiting Plaintiff Lynch by Plaintiff Justice was established by a long series of visits.

4. On one of the Saturdays in the latter part of May or early June, 1989, Shawnee Correctional Center held a picnic for the benefit of inmates of the facility to which family members and friends were invited.

5. Plaintiff Justice and his wife attended the picnic and were searched over Justice's objection. An Unknown Employee of Shawnee, when told by Justice that he objected to the search, asked, "Why, are you packing a weapon?" Justice replied, "No, I just don't like to be searched; it's in violation of the Fourth Amendment and of Article I Section 6 of the Constitution of the State of

Illinois." The Unknown Employee said, "Yeah, we put up with a lot of <bleep> here." The perfunctory search was conducted on public property outside the confines of Shawnee, where the vehicle was never accessible to unsupervised inmates of the prison. The search was completed and Justice and his wife attended the picnic, although irreparably damaged by the warrantless search. Plaintiff Justice has protected liberty interests secured under Illinois law and the Constitutions of the State of Illinois and the United States of which he has been deprived without due process of law.

6. On May 13, 1990, Plaintiff Justice and Hans Lynch, Plaintiff Lynch's son, came to visit Plaintiff Lynch. When they were signing in, an Unknown Employee approached Plaintiff Justice and asked if he might have permission to search Justice's car. Plaintiff Justice replied,

"No." The Unknown Employee said, "You'll have to wait right here while I talk to my supervisor." The Supervisor came back with him and two other Unknown Employees and asked, "What seems to be the problem here?" He was told that the first Unknown Employee had asked to search and that he did not have probable cause to search. The Supervisor said, "You either let us search your vehicle or this visit is terminated." Because Plaintiff Lynch had not seen his son since before he was arrested in 1979, and the reason for the visit was for his son to see him, Plaintiff Justice said, "You can search the car, but it's against my will and over my objection, without probable cause, and in violation of the Fourth Amendment to the United States Constitution and Article I Section 6 of the Illinois Constitution." Plaintiff Justice was humiliated before Plaintiff Lynch's son by being forced to submit to

a procedure that violated his rights. The search was completed under duress, and the visit was accomplished, although the violation of his rights rankled Plaintiff Justice and diminished the enjoyment of the visit.

7. On Saturday, June 16, 1990, Shawnee Correctional Center of the Illinois Department of Corrections held a picnic for the benefit of inmates of the facility to which family members and friends were invited.

8. Plaintiff Justice with his wife had long planned to visit Plaintiff Lynch on this happy occasion, and Plaintiff Lynch had looked forward to their visit eagerly also.

9. Plaintiff Justice parked his car in the shade of trees a quarter mile from Shawnee and walked with his wife toward the facility. A guard came across State Highway 146 and met them a hundred yards from the intersection. He was carrying a

hand-held transceiver and was talking with someone on it. He asked, "Are you all just out for a walk.....?" Plaintiff Justice said, "We're just walking." The guard said over the transceiver, "They're just locals." Then he said to Plaintiff Justice, "We have to search all these cars here. We have a problem with contraband." A half-dozen cars were waiting south of the highway in line to enter the external parking grounds of the facility.

10. Plaintiff Justice and his wife crossed the highway and walked toward a guard who was handing out a memorandum of picnic guidelines. The memorandum of guidelines (Appendix, p. 1) nowhere advised visitors that their vehicles would be searched. The Defendant Assistant Warden Judson Childs rushed up and confronted Plaintiff Justice and asked, "Where are you going?" Plaintiff Justice replied, "We're going to the

picnic." Defendant Assistant Warden Judson Childs asked, "Did you come in a vehicle?" Plaintiff Justice replied, "Almost everyone came in a vehicle from somewhere." Defendant Assistant Warden Judson Childs replied, "You're not taking another step farther here unless you bring your vehicle." Plaintiff Justice asked, "You mean we can't walk onto the property?" Defendant Assistant Warden Judson Childs said, "That's right. You either bring your vehicle and let us search it or this visit is terminated."

11. Plaintiff Justice and his wife turned and walked back to their car. On the way, the driver of another car asked, "Are they turning people away?" Plaintiff Justice replied, "No, they won't let you in if you walk in; you have to arrive in a car and they demand that they search it. What does that tell you about your rights? They're trashing the Fourth Amendment."

12. A guard ran from across the highway and said to Plaintiff Justice, "Don't try to get a ride with some of these other visitors; you have to come in your own car."

13. Plaintiff Justice and his wife retrieved their car and got in line with the cars waiting to cross Highway 146E. One-half hour after first coming to Shawnee, the car became the first in line. Defendant Lt. Jerry Suits bent down to the window on the driver's side of the car and asked and was given the name of the driver. He then asked, "Do you object to our searching your car, ma'am?" Plaintiff Justice got out of the right side of the car and said, "I do. It's in violation of the Fourth Amendment and of Article I Section 6 of the Illinois Constitution."

14. Defendant Lt. Suits replied, "The Constitution's got nothing to do with it: we're demanding that you give us your

permission to search your car."

15. Plaintiff Justice said, "So if I don't waive my rights under the Constitution, you're going to deny me the right to visit my friend?"

16. Defendant Lt. Suits said, "That's right. I've searched four hundred vehicles this morning and I've got more to do. You either allow us to search your car or you get out of here."

17. Plaintiff Justice said, "And I'll bet you didn't find one bit of contraband in any of the four hundred cars."

18. Defendant Lt. Suits said, "Oh, yes we did. But I don't have to discuss that with you. I've got work to do."

19. Defendant Assistant Warden Judson Childs came up and said, "You either let us search you or you get off State property. Call the State Highway Patrolman."

20. Plaintiff Justice asked, "What is your name?"

21. Defendant Assistant Warden Judson Childs said, "That's irrelevant."

22. Pfc. D.R. Friedman arrived and said, "What's going on here?" and was given a synopsis of what had taken place, after which he said, "You either let them search your car, or you get off the property."

23. Plaintiff Justice asked for and was given Pfc. Friedman and Lt. Suits names and Pfc. Friedman said, "Get off the property or I'll have to arrest you," whereupon Plaintiff Justice and his wife summarily departed.

24. On July 18 Plaintiff Justice received a letter dated June 27, 1990; the envelope bore a postal meter date of July 13, 1990. The body of the letter stated,

> "Please be advised that you have been placed on the Permanent Restriction List for visiting at the Shawnee Correctional Center as well as all

correctional facilities within the Adult Division of the Department of Corrections. This restriction began on June 16, 1990.

"This restriction is a result of your second violation of Departmental Rules in that you refused permission for staff to search your vehicle on May 13, 1990, and June 16, 1990. I am also advising you that you may request review of this restriction after a six-month period."

The letter is initialed over the signature block of David G. Sandahl, Warden, with distribution to Assistant Warden Childs, Assistant Warden Obourn, Major Waters, Major Suits, Gatehouse, Armory, and the Warden's File.

25. On September 7, 1990 Plaintiff Justice sent a letter by Certified Mail with Return Receipt Requested to Defendant Sandahl with a copy to Defendant Kenneth L. McGinnis, addressed

to Director, Department of Corrections, 1301 Concordia Court, Springfield, Illinois 62708. Signed receipts were received from both Defendants. The body of the letter stated:

"On July 18 my wife and I each received letters dated June 27, 1990, bearing postal meter dates of July 13, 1990. The body of the letter addressed to me stated (here the contents of the letter in the Appendix at page 5 were recited.)

"Prior to taking any other action with regard to the denial of a visit on the occasion of the June 16, 1990, picnic because of my refusal to waive my rights under the Fourth Amendment to the Constitution for the United States and Article I Section 6 of the Constitution of the State of Illinois I wish to know if there are any administrative procedures which afford a remedy to me.

"Pursuant to Illinois Revised Statutes Chapter 116 Paragraph 201 et seq. demand is hereby made for a copy of the rules under which the searches were made in vehicles belonging to visitors at the family picnic on June 16, 1990, and for the orders delegating authority to you and your staff to make such searches."

No reply was received from either Defendant. The rules and delegation orders demanded in the final paragraph were not received.

26. Review of the restriction on visitation after a six-month period was not sought because it would be futile to have visitation privileges restored if the same unconstitutional search policies continued to exist. Such policies would result in denial of visitation before reaching the gate of the prison.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

The Complaint was brought under the Constitution for the United States of America for violation of the Plaintiffs' rights secured under the Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments.

All events complained of took place on public property outside the confines of the Shawnee Correctional Center, in Johnson County, in the State of Illinois.

This was a civil rights action under 42 U.S.C. 1983. The Court had jurisdiction to hear this case under 28 U.S.C. § 1343. The relief demanded for Declaratory Judgment found jurisdiction under 28 U.S.C. §§ 2201 and 2202. If either Plaintiff lacked standing to bring this cause under 42 U.S.C. § 1983, the Court had jurisdiction to hear his complaint under 28 U.S.C. § 1331.

ARGUMENT

1. The Seventh Circuit erred in ruling that the staff of a State prison may conduct searches of visitors' vehicles which remain outside the confines of the prison without reasonable suspicion directed toward a particular vehicle.

This Honorable Court should grant certiorari because the United States Court of Appeals for the Seventh Circuit has rendered a decision in conflict with the decision of the United States Court of Appeals for the Eighth Circuit.

The Petitioners are asserting that visitors have a reasonable expectation of privacy in their personal effects prior to entering the confines of a prison as guaranteed under the Fourth Amendment to the Constitution for the United States and under Article I § 6 of the Illinois Constitution.

Respondents assert that Plaintiff Justice was justifiably excluded from Shawnee (and all other institutions in the Illinois Department of Corrections!) for having refused a search. Justice never refused a search; he objected to the unreasonable searches which were demanded by the officials of Shawnee, which were executed over his objection at a picnic visit in May or June, 1989, and on May 13, 1990, and which resulted in retaliatory exclusion of Justice from the picnic held June 16, 1990. Uncontroverted allegations made in the amended complaint show Justice never refused a search (Appendix, pp. 39-41); he only objected to the searches conducted outside the confines of the prison.[1] At any time when Justice

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[1] Although the issue was never raised in the trial Court, Justice has a right secured under the First Amendment to object to what he perceives to be an unreasonable search under the Fourth Amendment. It was the exercise of a

entered the prison for a visit he was searched without objection on his part, and that would have been his expectation and would have been the course of events had he not been denied a visit on June 16, 1990, and subsequently permanently restricted in retaliation by Warden Sandahl because of Warden Sandahl's false perception that Justice had refused a search. The trial Court misapprehends the issue (Appendix, last paragraph, p. 246) when he states that Plaintiff Justice has a mistaken impression that prison visitors should not have to waive their Fourth Amendment rights as a condition to visiting.

Visitors do not lose all of their Fourth Amendment rights at the prison gates. Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982).

At every level of the hearing and

First Amendment right that resulted in the retaliatory acts alleged in the complaint.

appeal of this case those considering have avoided the crucial fact that there were <u>two</u> searches involved, one unreasonable outside the confines of the prison, and the other reasonable--a body search on entering the confines of the prison. Respondent Lt. Suits said, "The Constitution's got nothing to do with it: we're demanding that you give us your permission to search your car." (Appendix, p. 39, next to last paragraph.)

As the First Circuit noted in <u>Blackburn v. Snow</u>, 771 F.2d 556, 568 (1st Cir. 1985), "it has long been settled that government may not condition access to even a gratuitous benefit or privilege it bestows upon the sacrifice of a constitutional right. As the Supreme Court explained sixty years ago

> 'It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a

privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence,' Frost v. Railroad Commission, 271 U.S. 583, 593-94 (1925)." 771 F.2d at 568.

Plaintiff Justice's access to Shawnee was impermissibly conditioned on submission to an unconstitutional search. Defendants are not free to condition the

visitation opportunity on the sacrifice of Plaintiff Justice's protected Fourth Amendment rights. The trial court erred in dismissing the Plaintiffs' suit against all Defendants.

The Eighth Circuit has addressed related issues in at least six cases. In Hunter v. Auger the Eighth Circuit held that visitors do not lose all of their Fourth Amendment rights at the prison gates. Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982).

> "An investigatory search will be found constitutionally permissible only when supported by reasonable suspicion directed to the person to be searched..." U.S. v. Clay, 640 F.2d 157, 160 (8th Cir. 1981)

In the case of McDonell v. Hunter, 746 F.2d 785 (8th Cir. 1984), it was held by the Court in an appeal from the granting of a preliminary injunction that,

> "..the district court did not abuse

its discretion in granting a preliminary injunction .... prohibiting the warrantless searches of employee's automobiles parked outside the confines of the facility." McDonell v. Hunter, 746 F.2d 785 (8th Cir. 1984)

The District Court, following the affirmation of the preliminary injunction in the Court of Appeals for the Eighth Circuit, held that

"..it is unreasonable to search employees' automobile parked outside confines within which inmates are kept, even if parking lot is on ground owned by correctional facility;..." McDonell v. Hunter, 612 F.Supp. 1122 (D.C. Iowa 1985)

On appeal from that decision, the Court of Appeals again held, McDonell v. Hunter, 809 F.2d 1302 at 1309 (8th Cir. 1987), that

"Correctional officials can search

employees' vehicles parked outside institution's confines if it can be shown that inmates have unsupervised access to those vehicles, or upon showing of reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that vehicle to be searched contains contraband."

None of those circumstances pertains to visitors arriving at Shawnee for visits with friends or relatives. Visitors' vehicles are parked in areas outside the confines of the Shawnee, and inmates do not have unsupervised access to visitors' vehicles.

The situation at Shawnee is analogous to that in another 8th Circuit case, Marriott by and through Marriott v. Smith, 931 F.2d 517 (8th Cir. 1991) in which the acts of the jailor, as confirmed by his statement, "...was a

clear admission that the purpose of the search was to catch Nicole Marriott in a crime, not to protect the Morgan County Jail from contraband." Marriott v. Smith, 931 F.2d 517, 521 (8th Cir. 1991) This is a goal of the vehicle searches at Shawnee. At the June 16, 1990, picnic at Shawnee according to the testimony of Gary Rich, Internal Affairs Officer of Shawnee Correctional Center, (Tr.tr. 12/20/90, Appendix p. 22) four vehicles containing "contraband" were found in the search of visitors' vehicles. The "contraband" was alcohol, and two weapons. No one having sat in a half-hour long line, having driven six to eight hours each way for the visit, would knowingly have anything in his vehicle that would subject him to the disappointment of not visiting a relative or friend and the criminal prosecution that almost certainly followed the seizure of the

"contraband".[2]

Denial of Justice's visit, and denial of visitation until this very day, was done because Justice had asserted a Constitutional right: the first incident to which Respondent Sandahl's letter refers (Appendix, p. 5) occurred on May 13, 1990, at which time Justice asserted a Constitutionally based objection--although the Amended Complaint does not

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[2] 20 Ill. Adm. 525.60(f)(3) provides for temporary suspension of visiting privileges for a period of six months for

4) Possession of drugs when the visitor has demonstrated there was no intent to conceal and/or introduce drugs into the facility.

5) Possession of alcohol when the visitor has demonstrated there was no intent to conceal and/or introduce alcohol into the facility.

7) Possession of other contraband as defined under State, federal or local laws or other Departmental rules not specifically outlined in this Subpart.

Disposition of each case would depend upon the whim of prison officials.

recite it, Justice asked what probable cause the prison staff members had for searching his vehicle, and received no answer--and the vehicle was searched over his objection. The letter (Appendix, p. 5) states that Justice "refused permission for staff to search your vehicle on May 13, 1990, and June 16, 1990." The allegation reveals a mental bias on the part of prison supervisory staff which regards acknowledged Constitutional rights as impediments to their will. By this bias, formulated to perfection by Respondent Suits (Appendix, p. 39, l. 5), "The Constitution's got nothing to do with it: we're demanding that you give us your permission to search your car." Thus, one cannot even be searched over objection, and the four visitors recounted in Respondent Rich's testimony in open court on December 21, 1990, (Appendix p. 22) have submitted to a consensual search and the contraband

found is evidence to which they cannot object. They were entrapped by their desire to see their relatives or friends, by a malicious prison staff and Illinois Department of Corrections, who know that one percent of the happy people who come to their picnic can have their anticipation turned to misery for the staff's delectation.

2. The Seventh Circuit erred in holding that deprivation of visitation by the only friend who had visited an inmate routinely over a period of years is not cruel and unusual punishment when deprivation of visitation is the proximate cause of the inmate's transferral to Menard Psychiatric Center. This Honorable Court should grant certiorari to address the issue of deprivation of visitation as a violation of the Eighth Amendment. The Eighth Amendment must draw its meaning from the

evolving standards of decency that mark the progress of a maturing society. Rhodes v. Chapman, 452 U.S. 337, 346 (1981)

Petitioner Lynch became, as a proximate result of deprivation of visitation guaranteed by Illinois Statute, so paranoid that he retreated to his cell at Shawnee Correctional Center. There he destroyed his legal papers to protect himself from invasion of that privacy by staff of the prison and guarded what he had not destroyed over such a period of time that he lost twenty pounds from a fat-free body. He withdrew a successful petition for habeas corpus (Appendix, p. 261) because of fears that on retrial he would be sentenced to a longer term than he is now serving, although Illinois statute prohibits such sentences. He pleaded with Petitioner Justice to apply for lifting the permanent restriction on visitation. This was done and was

denied. (Appendix pp. 255, 257, 259)

He is presently in Menard Psychiatric Center where he will remain for at least 90 days under a regimen which includes the forced administration of psychotropic drugs with such dangerous side effects that it is surprising that they continue to be prescribed. One, HALDOL haloperidol, is to be prescribed for children "only after failure to respond to psychotherapy or medications other than antipsychotics." It can cause irreversible effects which, to the lay mind, outweigh its use. A second, COGENTIN benztropine mesylate, given to counteract the parkinsonism which is often induced by the first, may cause paralytic ileus, hyperthermia and heat stroke, all of which have sometimes been fatal. A third drug concomitantly administered to Lynch, SINEQUAN doxepin hydrochloride, may cause confusion, disorientation, hallucinations, numbness,

paresthesias, ataxia, and extrapyramidal symptoms and seizures. (Physicians' Desk Reference, 45th Edition, Medical Economics Company Inc., Oradell, New Jersey, 1991) There is no time for psychotherapy in a institution where the patient-inmates are seen once a month by the supervising medical personnel, a psychiatrist; development of dangerous permanently debilitating side effects may go unassessed by patients who are incapacitated by the drugs.

Lynch received a bachelor's degree from Roosevelt University, completed a paralegal correspondence course, and became a certified emergency medical technician within the past three or four years. He had every prospect of returning to useful sociocentric freedom. His retreat into paranoia was occasioned by the cruel and unusual punishment of deprivation of visitation and the supportive counsel that un-monitored

conversation allows.

3. The Seventh Circuit erred in holding that non-incarcerated persons are devoid of any right of visitation with incarcerated friends and relatives.

This Honorable Court should grant certiorari because the United States Court of Appeals for the Seventh Circuit has rendered a decision in conflict with the decision of the United States Court of Appeals for the Fifth Circuit.

The Seventh Circuit has declared in Elizabeth Mayo v. Lane, 867 F.2d 374 (7th Cir. 1989), that there is no constitutional right of a free person to visit one who is incarcerated. The right to visit was held to be protected by the First Amendment in Lynott v. Henderson, 533 F.Supp. 742, 764 (W.D. La. 1982); the right to visit was held to be protected based on unspecified

constitutional grounds in Lynott v. Henderson, 610 F.2d 340, 342-43 (5th Cir. 1980); and unreasonable visiting restrictions were held to violate the Eighth Amendment in Laaman v. Helgemoe, 437 F.Supp. 269 (D.N.H. 1977) and Hardwick v. Ault, 437 F.Supp. 116, 131 (M.D.Ga. 1978).

The right to visit those imprisoned is a retained right under Amendment IX of the Constitution for the United States, which says,

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Those rights are reiterated in the Constitution of the State of Illinois at Article I, § 24,

> "**Rights Retained** The enumeration in this Constitution of certain rights shall not be construed to deny or

disparage others retained by the individual citizens of the State."

Visitation to prisoners has the status of a Biblical mandate in Matthew 25:44-46

"Then shall they also answer him, saying, Lord, when saw we thee....in prison, and did not minister unto thee?

"Then shall he answer them, saying, Verily I say unto you, Inasmuch as ye did it not to one of the least of these, ye did it not to me."

"And these shall go away into everlasting punishment: but the righteous into life eternal."

The Common Law derives much of its content from the Bible. The Common Law "consists of those principles, usage, and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature." Bishop

v. U.S., 334 F.Supp. 415, 418 (D.C. Texas)

The Common Law is statutorily recognized as the rule in Illinois, at Illinois Revised Statutes, Ch. 1, Paragraph 801,

"801. Rule of decision

"§ 1. The common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First, excepting the second section of the sixth chapter of 43d Elizabeth, the eighth chapter of 13th Elizabeth, and ninth chapter of 37th Henry Eighth, and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

The Seventh Circuit upholds Plaintiff Lynch's rights, which are recognized by the Attorney General in his Motion to Dismiss plaintiffs' motion for a TRO, in its opinion in Elizabeth Mayo v. Lane, et al., 867 F.2d 374 (1989). Mayo's argument based on Illinois Revised Statutes, Chapter 38, Paragraph 1003-7-2(f) which says that, "All of the institutions and facilities of the Department shall permit every committed person to receive visitors," is rejected by the Court, Elizabeth Mayo v. Lane, et al., 867 F.2d 374 at 376[4], holding that, "The quoted language creates, at most, a right to receive visitors, not a right to visit." (Emphasis in the original.) The Court is correct, but is offering us enigmatic profundities equivalent to "We know the sound of two hands clapping, but what is the sound of one hand clapping?" A statutorily confirmed right to receive visitors

without a concomitant right to visit, whether statutorily affirmed or not, is a paradoxical nullity worthy of comic opera treatment.

Elizabeth Mayo did not have standing to complain because her grandnephew had been paroled before the filing of the suit. She was denied visitation because drugs were found in the toilet after a juvenile who was with her had gone into the toilet. It was not even proven that the drugs had been left there by that visitor. Elizabeth Mayo had expressed no desire to visit at other prisons. Plaintiff Justice has as much right to visit as any of the multitude of visitors who visit inmates. He does not have to accept violations of his Constitutionally protected rights as additional conditions to visit.

Thus, one of the Plaintiffs has statutory protection to a right to visitation--which was undoubtedly

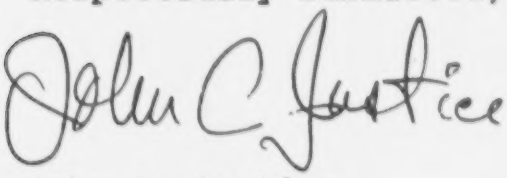
provided by the Legislature to preclude capricious denials of visits by prison staff members--and the other has no statutory remedy at law.

This Honorable Court should set forth a general rule regarding rights of visitation. Abuses of the rights of visitors are certain to become more frequent as a larger percentage of our population becomes incarcerated. The unfortunate visitors whose vehicles were found to have "contraband" in them (Appendix p. 23) had no possibility of introducing contraband into the prison because their vehicles remained outside the prison fence, with <u>all</u> their possessions including wedding rings, locked inside them. (Appendix, pp. 1-3) Even the key to the vehicle was surrendered to prison staff in exchange for a receipt. Within the walls of the prison, they were then given a body search and passed through a metal

detector. In searching vehicles outside the prison fence, the staff had as its purpose the catching of visitors in a crime, not the protection of the prison. For that reason the searches had no rational or justifiable penalogical objective. The Seventh Circuit erred in ruling that, "Because of the wide-ranging deference to be accorded the decisions of prison administrators, the burden is not on the prison officials to show affirmatively that its policy or action meets these objectives." (Appendix, p. 253.) Their ruling contrasts radically with the Eighth Circuit's approach in Marriott v. Smith, 931 F.2d 517, 521 (8th Cir. 1991), where they held that the acts of the jailor, as confirmed by his statement, "...was a clear admission that the purpose of the search was to catch Nicole Marriott in a crime, not to protect the Morgan County Jail from contraband."

WHEREFORE, the Petitioners pray this Honorable Court grant their Petition for Certiorari to the Seventh Circuit so that the issues raised may be resolved, and that the rights of inmates and visitors may be declared.

Respectfully submitted,



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